

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION

CHAPTER 739
SENATE BILL 409

AN ACT TO PROHIBIT RETROACTIVE MODIFICATION OF PAST DUE CHILD SUPPORT PAYMENTS AND TO GIVE VESTED PAST DUE CHILD SUPPORT THE JUDGMENT EFFECT REQUIRED BY FEDERAL LAW, CONSISTENT WITH DUE PROCESS OF LAW AND WITH EXISTING REQUIREMENTS FOR THE DOCKETING OF SUCH JUDGMENTS AND TO CLARIFY WHEN A DOMESTIC VIOLENCE ARREST MAY BE MADE WITHOUT A WARRANT.

The General Assembly of North Carolina enacts:

Section 1. The third sentence of G.S. 49-7 is amended by deleting the period and adding the phrase "subject to the limitations of G.S. 50-13.10."

Sec. 2. G.S. 49-8 is amended in the first sentence by deleting the period and adding the phrase "subject to the limitations of G.S. 50-13.10."

Sec. 3. G.S. 50-13.7 reads as rewritten:

"§ 50-13.7. Modification of order for child support or custody.—(a) An order of a court of this State for support of a minor child may be modified or vacated at any time, upon motion in the cause and a showing of changed circumstances by either party or anyone ~~interested~~. interested subject to the limitations of G.S. 50-13.10. Subject to the provisions of G.S. 50A-3, an order of a court of this State for custody of a minor child may be modified or vacated at any time, upon motion in the cause and a showing of changed circumstances by either party or anyone interested.

(b) When an order for support of a minor child has been entered by a court of another state, a court of this State may, upon gaining jurisdiction, and upon a showing of changed circumstances, enter a new order for support which modifies or supersedes such order for ~~support~~. support, subject to the limitations of G.S. 50-13.10. Subject to the provisions of G.S. 50A-3, when an order for custody of a minor child has been entered by a court of another state, a court of this State may, upon gaining jurisdiction, and a showing of changed circumstances, enter a new order for custody which modifies or supersedes such order for custody."

Sec. 4. Chapter 50 of the General Statutes of North Carolina is amended by adding a new section to read:

"§ 50-13.10. Past due child support vested; not subject to retroactive modification; entitled to full faith and credit.—(a) Each past due child support payment is vested when it accrues and may not thereafter be vacated, reduced, or otherwise modified in any way for any reason, in this State or any other state, except that a child support obligation may be modified as otherwise provided by law, and a vested past due

payment is to that extent subject to divestment, if, but only if, a written motion is filed, and due notice is given to all parties either:

- (1) before the payment is due or
- (2) if the moving party is precluded by physical disability, mental incapacity, indigency, misrepresentation of another party, or other compelling reason from filing a motion before the payment is due, then promptly after the moving party is no longer so precluded.

(b) A past due child support payment which is vested pursuant to G.S. 50-13.10(a) is entitled, as a judgment, to full faith and credit in this State and any other state, with the full force, effect, and attributes of a judgment of this State, except that no arrearage shall be entered on the judgment docket of the clerk of superior court or become a lien on real estate, nor shall execution issue thereon, except as provided in G.S. 50-13.4(f)(8) and (10).

(c) As used in this section, 'child support payment' includes all payments required by court or administrative order in civil actions and expedited process proceedings under this Chapter, by court order in proceedings under Chapter 49 of the General Statutes, and by agreements entered into and approved by the court under G.S. 110-132 or G.S. 110-133.

(d) For purposes of this section, a child support payment or the relevant portion thereof, is not past due, and no arrearage accrues:

- (1) from and after the date of the death of the minor child for whose support the payment, or relevant portion, is made;
- (2) from and after the date of the death of the supporting party;
- (3) during any period when the child is living with the supporting party pursuant to a valid court order or to an express or implied written or oral agreement transferring primary custody to the supporting party;
- (4) during any period when the supporting party is incarcerated, is not on work release, and has no resources with which to make the payment.

(e) When a child support payment which is to be made to a clerk of superior court is not received by the clerk when due, the payment is not a past due child support payment for purposes of this section, and no arrearage accrues, if the payment is actually made to and received on time by the party entitled to receive it and such receipt is evidenced by a canceled check, money order, or contemporaneously executed and dated written receipt. Nothing in this section shall affect the duties of the clerks under this Chapter or Chapter 110 of the General Statutes with respect to payments not received by them on time, but the court, in any action to enforce such a payment, may enter an order directing the clerk to enter the payment on his records as having been made on time, if the court finds that the payment was in fact received by the party entitled to receive it as provided in this subsection."

Sec. 5. G.S. 52A-21 reads as rewritten:

"§ 52A-21. Application of payments.—A support order made by a court of this State pursuant to this Chapter does not nullify and is not nullified by a support order made by a court of this State pursuant to any other law or by a support order made by a court of any other state pursuant to a substantially similar act or any other law regardless of

priority of issuance, unless otherwise specifically provided by the court in accordance with G.S. 50-13.7 and G.S. 50-13.10. Amounts paid for a particular period pursuant to any support order made by the court of another state shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this State."

Sec. 6. G.S. 50B-4(b) reads as rewritten:

"(b) A law-enforcement officer shall arrest and take a person into custody without a warrant or other process if the officer has probable cause to believe that the person has violated a court order excluding the person from the residence or household occupied by a victim of domestic violence or directing the person to refrain from harassing or interfering with the victim, and if the victim, or someone acting on the victim's behalf, presents the law-enforcement officer with a copy of the order or the officer determines that such an order exists, and can ascertain the contents thereof, through phone, radio or other communication with appropriate authorities. The person arrested shall be brought before the appropriate district court judge at the earliest time possible to show cause why he or she should not be held in civil and/or criminal contempt for violation of the order. The person arrested shall be entitled to be released under the provisions of Article 26, Bail, of Chapter 15A of the General Statutes."

Sec. 7. If any provision of this act or its application to any person or circumstances is held invalid by any court of competent jurisdiction, the invalidity will not affect other provisions or applications that can be given effect without the invalid provision or application; and to this end the provisions of this act are severable.

Sec. 8. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 7th day of August, 1987.